

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE: )  
 ) CHAPTER 13  
OSCAR JEOVANNY MORENO )  
 ) CASE NO. 10-80942  
DEBTOR. )

UNITED STATES OF AMERICA'S OBJECTION TO  
CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN

Comes now the United States of America, by and through its attorney, John W. Stone, Jr., Acting United States Attorney for the Middle District of North Carolina, on behalf of the Internal Revenue Service (the Service), and objects to confirmation of the Chapter 13 Plan filed by the debtor herein on November 5, 2010 (the plan).

IN SUPPORT THEREOF, the United States avers:

1. The debtor in this case filed his Chapter 13 petition on May 28, 2010.

2. On June 25, 2010, the Service filed its Proof of Claim dated June 24, 2010, in the amount of \$156,033.71. On October 4, 2010, the Service amended that claim. Such amended claim consists of a secured claim in the amount of \$11,069.50, an unsecured priority claim pursuant to 11 U.S.C. § 507(a)(8) in the amount of \$55,078.66, and an unsecured general claim in the

amount of \$89,885.35. A copy of the Service's amended claim is attached hereto as Exhibit A.

3. The Chapter 13 plan is objectionable because the plan does not adequately provide for the Service's secured claim in the amount \$11,069.50. To date, the debtor has not filed an objection to the Service's secured claim in the amount of \$11,069.50, nor has the Service agreed to concede any portion of that claim. A debtor's plan is not the appropriate forum for a debtor to raise an objection to the amount of a creditor's claim. See Bankruptcy Rule 3007; United States Aid Fund, Inc. v. Espinosa, 130 S. Ct. 1367 (2010); In re Smith, 142 B.R. 862, 866 (Bankr. E.D. Ark. 1992); In re Barbier, 77 B.R. 799, 799-800 (Bankr. D. Nev. 1987) rev'd on other grounds, United States v. Barbier, 896 F.2d 377 (9<sup>th</sup> Cir. 1990). If the debtor objects to the Service's secured claim, then the debtor should file an objection to the Service's claim or try to reach an agreement with the Service with respect to such claim.

4. The Chapter 13 plan is also objectionable because, as set forth in the trustee's objection to confirmation of the plan filed on November 5, 2010, the proposed plan payment is insufficient to pay in full the Service's priority tax claim in the amount of \$55,078.66 as required by 11 U.S.C. § 1322(a)(2),

even if the term of the plan is 5 years, the maximum term allowed under 11 U.S.C. § 1322(d).

WHEREFORE, it is requested that the debtor's Chapter 13 plan be denied confirmation.

JOHN W. STONE, JR.  
Acting United States Attorney

11/21/10  
Date

By:

Scott L. Little  
Scott L. Little  
Special Assistant  
United States Attorney  
F.L. Bar No. 0963011  
320 Federal Place, Room 509  
Greensboro, NC 27401  
Tel. No. (336) 378-2055

UNITED STATES BANKRUPTCY COURT <u>MIDDLE</u> DISTRICT OF <u>NORTH CAROLINA</u>		<b>PROOF OF CLAIM</b>
Name of Debtor: <u>OSCAR JEOVANNY MORENO</u>		Case Number: <u>10-80942</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>Department of the Treasury - Internal Revenue Service</u>		<input checked="" type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.
Name and address where notices should be sent: <u>Internal Revenue Service</u> <u>P.O. Box 21126</u> <u>Philadelphia, PA 19114</u>		Court Claim Number: <u>5</u> (If known)
Telephone number: <u>1-800-913-9358</u> Creditor Number: <u>784554053</u>		Filed on: <u>06/24/2010</u>
Name and address where payments should be sent (if different from above): <u>Internal Revenue Service</u> <u>P.O. Box 21125</u> <u>Philadelphia, PA 19114</u>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Telephone Number: <u>1-800-913-9358</u>		<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
<b>1. Amount of Claim as of Date Case Filed:</b> <u>\$ 156,033.51</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4. If all or part of your claim is entitled to priority, complete item 5. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b> Specify the priority of the claim.
<b>2. Basis for Claim:</b> <u>Taxes</u> (See instruction #2 on reverse side.)		<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).
<b>3. Last four digits of any number by which creditor identifies debtor:</b> <u>See Attachment</u>  <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		<input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information. Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input checked="" type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <i>*All of debtor(s) right, title and interest to property - 26 U.S.C. §6321</i> Value of Property: \$ _____ Annual Interest Rate <u>4</u> % Amount of arrearage and other charges as of time case filed included in secured claim. If any: \$ <u>11,069.50</u> Basis for perfection: <u>See Attachment</u> Amount of Secured Claim: \$ <u>11,069.50</u> Amount Unsecured: \$ <u>89,885.35</u>		<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim. <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain:		<input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7). <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____). Amount entitled to priority: <u>\$ 55,078.66</u> <i>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>
<b>Date:</b> <u>10/01/2010</u> <b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <u>/s/ W SUMMERS,</u> Bankruptcy Specialist (336) 378-2366  Internal Revenue Service 320 FEDERAL PL. RM 335 GREENSBORO, NC 27401		<b>FOR COURT USE ONLY</b>

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C §§ 152 and 3571.

**EXHIBIT A**

# Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service



Form 10  
Attachment

**In the Matter of:** OSCAR JEOVANNY MORENO  
5314 HADRIAN DRIVE  
DURHAM, NC 27703

Case Number

10-80942

Type of Bankruptcy Case

CHAPTER 13

Date of Petition

05/28/2010

Amendment No. 1 to Proof of Claim dated 06/24/2010.

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

## Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date	Office Location
XXX-XX-9027	INCOME	12/31/2005	08/03/2009	\$11,069.50	\$0.00	\$0.00	05/03/2010	DURHAM COUNTY

**Total Amount of Secured Claims: \$11,069.50**

## Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-9027	INCOME	12/31/2007	08/10/2009	\$888.00	\$92.21
XXX-XX-9027	INCOME	12/31/2008	04/12/2010	\$2,175.00	\$99.45
XXX-XX-9027	INCOME	12/31/2009	1 Unassessed-No Return	\$51,580.38	\$243.62
				<u>\$54,643.38</u>	<u>\$435.28</u>

**Total Amount of Unsecured Priority Claims: \$55,078.66**

## Unsecured General Claims

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-9027	INCOME	12/31/2005	08/03/2009	\$30,547.50	\$12,009.55
XXX-XX-9027	INCOME	12/31/2006	08/03/2009	\$17,647.00	\$3,388.14
				<u>\$48,194.50</u>	<u>\$15,397.69</u>

Penalty to date of petition on unsecured priority claims (including interest thereon) . . . . . \$816.51

Penalty to date of petition on unsecured general claims (including interest thereon) . . . . . \$25,476.65

**Total Amount of Unsecured General Claims: \$89,885.35**

UNASSESSED TAX LIABILITY(IES) HAVE BEEN LISTED ON THIS CLAIM BECAUSE OUR RECORDS SHOW NO RETURN(S) FILED. WHEN THE DEBTOR(S) FILES THE RETURN OR PROVIDES OTHER INFORMATION AS REQUIRED BY LAW THE CLAIM WILL BE AMENDED.

INTERNAL REVENUE SERVICE FACSIMILE FEDERAL TAX LIEN DOCUMENT  BANKRUPTCY DOCKET: 10-80942	Recording Number: UCC Number : Liber : Page :
Area: SMALL BUSINESS/SELF EMPLOYED #3 Lien Unit Phone: (800) 829-3903	IRS Serial Number: 647745510

This Lien Has Been Filed in Accordance with  
Internal Revenue Regulation 301.6323(f)-1.

Name of Taxpayer:  
OSCAR MORENO

Residence:  
5314 HADRIAN DR  
DURHAM, NC 27703-7118

With respect to each assessment below, unless notice of lien  
is refiled by the date in column(e), this notice shall constitute  
the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/2005	XXX-XX-9027	08/03/2009	09/02/2019	\$62,284.54
1040	12/31/2006	XXX-XX-9027	12/03/2007	01/02/2018	
1040	12/31/2006	XXX-XX-9027	08/03/2009	09/02/2019	\$29,513.25
1040	12/31/2007	XXX-XX-9027	08/10/2009	09/09/2019	\$1,139.04

Filed at: CLERK OF SUPERIOR COURT DURHAM COUNTY DURHAM, NC 27701	Total	\$92,936.83
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This notice was prepared and executed at BALTIMORE, MD  
on this, the 22nd day of April, 2010.

Authorizing Official: THERESA HARLEY	Title: ACS 23-00-0008
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing UNITED STATES OF AMERICA'S OBJECTION TO CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN was served this date on the parties listed below by depositing copies thereof, postage prepaid, in the United States mail, or via electronic service of the ECF system:

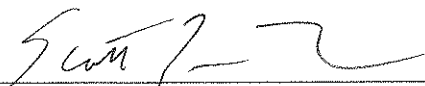
Oscar Jeovanny Moreno  
Debtor  
5314 Hadrian Drive  
Durham, NC 27703

John T. Orcutt  
Attorney for Debtor  
6616-203 Six Forks Rd.  
Raleigh, NC 27615

Richard M. Hutson, II  
Chapter 13 Office  
302 East Pettigrew St., Suite B-140  
P.O. Box 3613  
Durham, NC 27702

Date: \_\_\_\_\_

11/29/10

  
SCOTT L. LITTLE  
Special Assistant  
United States Attorney  
F.L. Bar No. 0963011  
320 Federal Place, Room 509  
Greensboro, NC 27401  
Telephone: (336) 378-2055